

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DOUGLAS L. POWELL,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:05CV01868ERW
)	
FORD MOTOR COMPANY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court upon Defendant's Motion to Dismiss and Request for Sanctions [doc. #5].

Defendant filed its Motion to Dismiss and Request for Sanctions ("Defendant's Motion") on October 20, 2005. On November 14, 2005, Plaintiff filed a Motion to Remand [doc. #7]. On November 15, 2005, the Court granted Plaintiff's request that he not be required to respond to Defendant's Motion until ten days after the Court's ruling on his Motion to Remand. On March 2, 2006, the Court denied Plaintiff's Motion to Remand. On March 20, 2006, the Court issued an Order to Show Cause, finding that Plaintiff had failed to file a response to Defendant's Motion. At that time, the Court ordered Plaintiff to show cause no later than March 27, 2006 why Defendant's Motion should not be granted. The Court stated that failure to comply with the Order to Show Cause "may result in dismissal of this claim." As of the date of this Order, Plaintiff has failed to respond to Defendant's Motion and has failed to comply with the Court's Order to Show Cause. Therefore,

Defendant's Motion will be granted, and this action will be dismissed.

In Defendant's Motion, Defendant also requests that Plaintiff be sanctioned for his bad faith litigation conduct. Defendant's Memorandum of Law sets forth in great detail the procedural history of this case and the reasons sanctions are warranted. *See* Def.'s Mem. in Supp., pp. 1-2. As Defendant explains, Plaintiff has engaged in numerous instances of bad faith litigation conduct, including: (1) failing to answer Interrogatories and Requests for Production of Documents in Case No. 4:04CV00338 ERW; (2) failing to comply with this Court's order to comply with Defendant's discovery requests in Case No. 4:04CV00338; (3) re-filing this case after the statute of limitations had expired; and (4) failing to comply with this Court's most recent Order to Show Cause. "A district court has authority under its inherent power to assess attorney's fees against a party which has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *United States v. Gonzalez-Lopez*, 403 F.3d 558, 564 (8th Cir. 2005) (internal quotations omitted). Due to Plaintiff's conduct, Defendant has been forced to defend against Plaintiff's claims for a second time, and the Court has had to devote resources to this matter for a second time, including a recent ruling on Plaintiff's Motion to Remand. For these reasons, the Court will assess Defendant's attorneys' fees against Plaintiff. So that the Court may properly determine the amount of attorneys' fees to be assessed against Plaintiff, the Court will order Defendant to submit a Statement of Attorneys' Fees with a supporting affidavit within ten days of the date of this Order.¹

Accordingly,

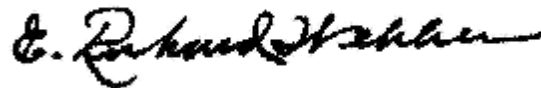
IT IS HEREBY ORDERED that Defendant's Motion to Dismiss and Request for Sanctions

¹Defendant's Statement of Attorneys' Fees should include all attorneys' fees reasonably and necessarily incurred in the above styled case. The Statement of Attorney's Fees should not include the attorneys' fees incurred in Case No. 4:04CV00338 ERW.

[doc. #5] is **GRANTED**. This matter is **DISMISSED without prejudice**. As a sanction for its bad faith litigation conduct, Plaintiff will be ordered to pay the attorneys' fees reasonably and necessarily incurred by Defendant in the above-styled case.

IT IS FURTHER ORDERED that Defendant shall file a Statement of Attorneys' Fees, as explained herein, within **TEN (10)** days of the date of this Order.

Dated this 12th day of April, 2006.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE